

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) 20-CR-1012
)
DOUGLAS BUTTIKOFER, JR.,)
)
Defendant.)

APPEARANCES:

ATTORNEY ELIZABETH DUPUICH, U.S. Attorney's Office,
111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401,
appeared on behalf of the United States.

ATTORNEY MARK EISENBERG, Eisenberg Law Offices,
308 E. Washington Avenue, PO Box 1069, Madison,
Wisconsin 53701-1069, appeared on behalf of the
Defendant.

SENTENCING HEARING,

HELD BEFORE THE HON. C.J. WILLIAMS,

on the 20th day of August, 2021, at 111 Seventh Avenue
S.E., Cedar Rapids, Iowa, commencing at 8:58 a.m., and
reported by Patrice A. Murray, Certified Shorthand
Reporter, using machine shorthand.

Transcript Ordered: 9/24/21
Transcript Completed: 10/27/21

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1 (The following proceedings were held in open court.)

2 THE COURT: The matter now before the Court is
3 United States of America versus Douglas John Buttikofer,
4 Jr., Criminal Case Number 20-CR-1012. This matter comes
5 on for a sentencing hearing. The United States is
6 represented by Assistant United States Attorney Elizabeth
7 Dupuich. The defendant is personally present and
8 represented by Attorney Mark Eisenberg. Participating by
9 telephone is United States Probation Officer Pat Korth.
10 He is the author of the presentence investigation report
11 filed at document number 128 in the court's file.

12 On February 2, 2021, the defendant pled guilty to
13 one count of a three-count superseding indictment. He
14 pled guilty to Count 3 which charged him with accessing
15 child pornography. This was in violation of Title 18
16 United States Code Sections 2252A(a)(5)(B) and
17 2252A(b)(2).

18 By statute, that crime is punishable by up to
19 20 years in prison without the possibility of parole.
20 After the defendant has served his prison sentence, the
21 Court will place him on a term of supervised release of
22 at least 5 years and it can be up to life on supervised
23 release. Probation is an option under the statute; and
24 were the Court to impose probation, it would be for a
25 term of 1 to 5 years. The Court can impose a fine of up

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1 to \$250,000. The Court must impose a mandatory special
2 assessment of \$100. Under the JVTa, I also have to
3 impose a mandatory \$5,000 special assessment unless I
4 find the defendant to be indigent. And under the AVAA,
5 the -- I think it's the Amy, Vicky, and Andy Child
6 Pornography Assistance Act, I can also impose another
7 special assessment of up to \$17,000.

8 Ms. Dupuich, on behalf of the United States, have
9 you had a full and fair opportunity to review this
10 presentence report?

11 MS. DUPUICH: Yes, Your Honor.

12 THE COURT: I noted that the government had
13 some objections. I saw objections at paragraphs 59 and
14 60 having to do with defendant's mental health. And then
15 at paragraph 73 having to do with ability to pay a fine.
16 Are those the only objections the government has to the
17 presentence report, including the calculation of the
18 guidelines?

19 MS. DUPUICH: Yes, Your Honor.

20 THE COURT: Tell me about the ability to pay a
21 fine at this point. Are you contesting the defendant's
22 ability to pay a fine at this stage? Do you intend to
23 contest that at this point?

24 MS. DUPUICH: No, Your Honor.

25 THE COURT: All right. This is a victim case.

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1 Do you have any victims who wish to address this Court as
2 part of this hearing?

3 MS. DUPUICH: No, Your Honor.

4 THE COURT: Do you intend to present any
5 witnesses during this hearing?

6 MS. DUPUICH: Yes, I do.

7 THE COURT: All right. On what issues, just so
8 I'm familiar?

9 MS. DUPUICH: Thank you, Your Honor. With
10 respect to the paragraph reflecting the defendant's
11 mental health, we do have a witness from the correctional
12 center, an inmate named Charles Gregory, with respect to
13 some statements made by the defendant related to his
14 mental health. And then we have a witness from the
15 Illinois State Police here to testify briefly.

16 THE COURT: About the Illinois --

17 MS. DUPUICH: Correct.

18 THE COURT: Understood. All right. Thank you.

19 Mr. Eisenberg, first of all, have you and your
20 client had a full and fair opportunity to review this
21 report?

22 MR. EISENBERG: Yes, sir.

23 THE COURT: I understand -- when I went through
24 it, I saw the defendant had some objections as well. I
25 saw objections at paragraphs 6, 9, 13, 14, 15, 21, and

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1 24, having to do with some details of the offense
2 conduct. There was an objection at paragraph 47 having
3 to do with pending charges; at paragraph 48 having to do
4 with other arrests; and then at paragraph 93 regarding
5 the defendant's ability to pay the JVTA special
6 assessment. Are those the only objections the defendant
7 has to the presentence report?

8 MR. EISENBERG: They are, Your Honor. And I
9 would point out these might not necessarily be objections
10 but they might also be some explanation in the
11 presentence.

12 THE COURT: And clarification.

13 MR. EISENBERG: Yes, sir.

14 THE COURT: And I understood them to be such.

15 Do you believe, other than the JVTA, that I need to
16 rule on any of your objections at this point?

17 MR. EISENBERG: No, Your Honor, I don't.

18 THE COURT: Very good. Could you make a brief
19 record, Mr. Eisenberg, of how you went through this
20 report with your client?

21 MR. EISENBERG: Sure. The first one I did send
22 to him and we discussed it over the telephone. Then on
23 the addendum, I sent him the addendum on June 2nd, and we
24 both read it. We talked briefly about it last night, but
25 he will tell you he read it, and I read it, and we

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1 discussed it.

2 THE COURT: Very good.

3 Mr. Buttikofer, first of all, do you feel like
4 you've had sufficient time to go over this report with
5 Mr. Eisenberg?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And whenever you spoke with
8 Mr. Eisenberg about this report, has he been able to
9 answer any questions you've had about it?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you have any questions today
12 about this report?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: All right. Let's begin this
15 hearing then by turning to the calculation of the
16 advisory guidelines as determined by the probation
17 office. That calculation begins at page 10. At
18 paragraph 27 the probation office has assessed the
19 defendant with a base offense level for this offense of
20 18. This is under guideline section 2G2.2(a)(1).

21 At paragraph 28 the probation office has assessed
22 the defendant with a 2-level enhancement because the
23 offense involved material involving a prepubescent minor
24 or a minor who had not attained the age of 12 years.
25 This is under guideline section 2G2.2(b)(2).

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1 At paragraph 29 the probation office has assessed
2 the defendant with a 2-level enhancement under guideline
3 section 2G2.2(b)(3)(F) because the defendant knowingly
4 engaged in distribution.

5 At paragraph 30, the probation office has assessed
6 the defendant with a 4-level enhancement under guideline
7 section 2G2.2(b)(4), because the material involved or
8 portrayed sadistic or masochistic conduct or sexual abuse
9 or exploitation of an infant or toddler.

10 At paragraph 31, the probation office has assessed
11 the defendant with a 2-level enhancement under guideline
12 section 2G2.2(b)(6), because the offense involved the use
13 of a computer or computer service for the possession,
14 transmission, or receipt of the material.

15 At paragraph 32, the probation office has assessed
16 the defendant with a 4-level enhancement under guideline
17 section 2G2.2(b)(7)(C) for the number of images. In this
18 case, the number of images the probation office
19 determined to be 344. This is -- falls in the range of
20 300 -- more than 300 but less than 600 images. That
21 gives us an adjusted offense level of 32.

22 The defendant has pled guilty to this offense, and
23 so the probation office has awarded him with a 2-level
24 reduction for acceptance of responsibility. This is
25 under guideline section 3E1.1(a).

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1 Ms. Dupuich, as I recall, the defendant's plea in
2 this matter was late. What is the government's position
3 about whether the defendant should receive an additional
4 1-level reduction for acceptance under guideline section
5 3E1.1(b)?

6 MS. DUPUICH: We are not making that motion.
7 Thank you, Your Honor.

8 THE COURT: Very good. The Court cannot grant
9 that additional level without the government's motion,
10 and the government has not made that motion. So that
11 leaves us with a total offense level of 30.

12 The defendant has some criminal history, which the
13 probation office has summarized and scored beginning at
14 paragraph 40, carrying over to paragraph 45. The
15 defendant's prior convictions have not resulted in any
16 criminal history points however, so he remains in
17 criminal history category I. So with a total offense
18 level of 30, criminal history category I, the advisory
19 guideline range of imprisonment here is 97 to 120 months.

20 In preparation for today's hearing, I have reviewed
21 in detail, of course, this presentence investigation
22 report. I've also received additional materials from the
23 parties. The defendant filed a sentencing memorandum at
24 document 130, and attached to that were Exhibits A
25 through U.

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1 Mr. Eisenberg, are you moving those exhibits into
2 evidence at this time?

3 MR. EISENBERG: I would, Your Honor. Thank
4 you.

5 THE COURT: Any objection?

6 MS. DUPUICH: No, Your Honor.

7 THE COURT: A through U will be received.

8 (Whereupon, Exhibit A through U were received.)

9 THE COURT: Then at document 140, the
10 government filed a sentencing memorandum and attached
11 Exhibits 1 through 13. 1 actually is a video interview
12 of the defendant, which I have reviewed and it was
13 provided to the Court in advance.

14 Ms. Dupuich, are you moving those into evidence?

15 MS. DUPUICH: Yes, Your Honor, under seal
16 please. Thank you.

17 THE COURT: Any objection?

18 MR. EISENBERG: No, Your Honor.

19 THE COURT: Government Exhibits 1 through 13
20 will be received and under seal.

21 (Whereupon, Exhibits 1 through 13 were received.)

22 THE COURT: Mr. Eisenberg, I neglected to ask
23 you when we were going through the preliminary matters,
24 are you intending to call any witnesses today?

25 MR. EISENBERG: Depending on what the jailhouse

1 informant says, I may call his -- Mr. Buttikofer's mother
2 in rebuttal, but doubtful.

3 THE COURT: Okay. We'll see how that goes
4 then. I appreciate that.

5 All right. There are no contested guideline issues
6 here, but there are some contested issues with regard to
7 fine, the special assessments -- well, apparently not the
8 fine any longer, but the special assessments. There are
9 also restitution issues here. This is a mandatory
10 restitution. The Court previously ruled on a motion to
11 schedule a hearing on restitution at a later date.
12 That's scheduled for November 16, 2021, and so my intent
13 today is to rule on everything except for restitution,
14 and we will handle the restitution at that November
15 hearing.

16 Ms. Dupuich, I'd like to talk about the special
17 assessments first and then my intent would be to move on
18 to the evidence we have, and then go from there. What is
19 the government's position regarding the defendant's
20 indigent status and whether the Court should impose
21 either the JVTA special assessment or the AVAA special
22 assessment?

23 MS. DUPUICH: Thank you, Your Honor.
24 Obviously, the restitution is going to be first and
25 foremost of importance to the government. Secondly, with

1 respect to the JVTa, I think we would just simply rest on
2 the information provided in the brief and are aware that
3 it is a mandatory \$5,000 unless the defendant is
4 indigent, and we understand that.

5 With respect to the AVAA, again, I think we're just
6 resting on the information in the brief. We understand
7 that the fine is up to \$17,000 based on the 3553(a)
8 factors, and would also leave that to the Court's
9 discretion. Thank you, Your Honor.

10 THE COURT: Thank you.

11 Mr. Eisenberg, do you want to be heard on these
12 matters?

13 MR. EISENBERG: The only thing I would add,
14 Judge, is that the presentence writer has already
15 determined that he is indigent, and so I appreciate the
16 fact that you have the opportunity to impose these
17 sanctions, but since he's indigent, I don't think they're
18 warranted.

19 THE COURT: Thank you.

20 The case law with regard to the JVTa is somewhat in
21 a state of flux, as I understand it. There is at least
22 one case out of the Eighth Circuit, to my recollection,
23 that says the court, in assessing whether the defendant
24 should have to pay that JVTa special assessment, can take
25 into account not only his current assets but his future

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1 earning capacity. Certainly with regard to a fine, the
2 Court assesses a defendant's ability to pay a fine based
3 not just on his current financial status but his ability
4 to earn money in the future and pay a fine. And the
5 Court also takes those -- that earning capacity into
6 account, as I understand it, with the AVAA special
7 assessment as well.

8 At paragraph -- starting at paragraph 70 in the
9 presentence report and carrying over to paragraph 73, the
10 probation office has summarized the defendant's financial
11 condition. The defendant previous to his arrest in this
12 matter was earning a good income, around \$80,000 on
13 average a year, at least in the last 5 years of his
14 employment. He has been in custody for quite some time
15 now, has not been employed. He initially had some
16 assets. Those assets have been dissipated, largely for
17 his criminal defense in this case. And the probation
18 office has determined right now that he has maybe \$1,000
19 in assets, but liabilities exceeding \$45,000, so the
20 defendant is indigent at this point.

21 The defendant has some ability to earn a living in
22 the future. The nature of his employment previously was
23 as a driver for UPS. This conviction is not such that it
24 would keep him from working at his profession, unlike,
25 you know, for example, if this was a controlled substance

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1 offense and he was working as a medical provider, that he
2 may never be able to go back to that work. Here, the
3 defendant could go back to driving and could earn some
4 income in the future.

5 Nevertheless, I find the defendant is indigent. And
6 so, first of all, as far as the JVTA, I find that he does
7 not have the ability to pay that. I find that although
8 he has some earning capacity in the future, that earning
9 capacity is going to be delayed for some period of time
10 while he is incarcerated, and it is going to be somewhat
11 up in the air on what his earning capacity is going to be
12 in the future. So given those facts, I find the
13 defendant is unable to pay either a fine or the AVAA, and
14 I will not impose either one in this case. The defendant
15 will be responsible for restitution. I am taking that
16 into account as well in my assessment of the defendant's
17 ability to pay in the future. Paying restitution will
18 take priority, as the government has noted. And so to
19 the extent the defendant has any future earning capacity,
20 I want that earning capacity to be devoted toward paying
21 restitution to victims in this case as opposed to a fine
22 or the other special assessments. So that will be my
23 ruling regarding the financial issues in this case.

24 Ms. Dupuich, before we move on to hear the
25 government's evidence, is there anything else you think

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1 from a housekeeping standpoint we should take up at this
2 stage?

3 MS. DUPUICH: No, thank you, Your Honor.

4 THE COURT: Mr. Eisenberg?

5 MR. EISENBERG: No, Your Honor.

6 THE COURT: All right. I should have noted as
7 well that there is a motion for a downward variance that
8 the defendant has made as part of his sentencing
9 memorandum, and we'll take that up at the appropriate
10 time as well.

11 All right. Ms. Dupuich, I'm happy to hear from your
12 witnesses, so you may call your first witness.

13 MS. DUPUICH: Thank you, Your Honor. The
14 government calls Charles Gregory.

15 THE COURT: Is he in custody?

16 MS. DUPUICH: Yes.

17 THE COURT: Very good.

18 MS. DUPUICH: And I would note that the other
19 witness from Illinois is also present in the courtroom,
20 just to let defense know in case there's any objection to
21 that witness remaining.

22 THE COURT: Mr. Eisenberg?

23 MR. EISENBERG: No problem.

24 THE COURT: All right. Very good. He may
25 remain.

1 Good morning, sir. If you walk over here by this
2 chair, I'm going to have you raise your right hand as
3 best you can. I'll place you under oath.

4 CHARLES GREGORY,
5 called as a witness, being first duly sworn or affirmed,
6 was examined and testified as follows:

7 THE COURT: All right. The marshal will help
8 you move that chair out and take a seat. And I'd like
9 you to scoot up so you are right in front of that
10 microphone. And when you are comfortable, I'd like you
11 to state your name and spell your name for the court
12 reporter, please.

13 THE WITNESS: Okay. Charles Robert Gregory
14 III. C-H-A-R-L-E-S; Robert, R-O-B-E-R-T; Gregory,
15 G-R-E-G-O-R-Y, III.

16 THE COURT: Thank you.

17 Ms. Dupuich, you may proceed.

18 DIRECT EXAMINATION

19 BY MS. DUPUICH:

20 Q. In what correctional facility are you currently
21 living?

22 A. Iowa County Jail.

23 Q. Was there a period of time where you were housed in
24 the Linn County Correctional Center?

25 A. Yes.

1 Q. Was that from approximately November of 2020 through
2 January of 2021?

3 A. Yes.

4 Q. And at that point when you were housed in the Linn
5 County Correctional Center, did you have some contact
6 with another inmate named Doug Buttikofer, who is
7 currently seated in this courtroom?

8 A. Yes.

9 Q. What type of contact did you have with him over that
10 period? Was it a situation where you were speaking to
11 him every day or occasionally? Can you describe it?

12 A. Yes. Well, we lived in -- we were housed in like a
13 dorm type of facility. And initially, upon my coming to
14 that dorm, I was in the bunk right above him, so we
15 talked every day.

16 Q. So are you saying you were actually in the same sort
17 of cell area, where you were sleeping?

18 A. Yes, it's like a dormitory, and I was in -- it's
19 like bunkbeds. He was in the bottom bunk. I was in the
20 top bunk. But it's a dormitory so it's open, so you see
21 each other all day every day.

22 Q. And was that throughout the entire period that you
23 were there with the defendant from November of 2020
24 through January of 2021?

25 A. Yes.

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1 Q. When you were housed with the defendant, did you
2 have an opportunity to speak to him regarding the
3 criminal charges he was facing?

4 A. Yes.

5 Q. What information was he able to share with you with
6 respect to the criminal charges he was facing?

7 A. He told me -- we referred to them as charge A,
8 charge B, and charge C. Charge A and charge B were
9 receiving -- one was receiving child pornography, one was
10 distributing it, and charge C was, we referred to it, was
11 possessing of child pornography. Charge A and charge B
12 he said had a 5-year mandatory minimum, and charge C had
13 no 5-year mandatory minimum. And he didn't want to
14 take -- he was trying to -- he was hoping to only go to
15 trial or receive child -- charge C, which had no 5-year
16 mandatory minimum so that he maybe could, I don't know,
17 get a slap on the wrist.

18 Q. So you are indicating that he -- your understanding
19 was that he was facing a charge of possessing child
20 pornography which did not have a 5-year mandatory
21 minimum?

22 A. Yes.

23 Q. And that is the charge that he wanted to plead to?

24 A. That's the one that he wanted.

25 Q. At some point did he share some information with you

1 with respect to an expert witness he had hired in his
2 case?

3 A. Yes. He said that during the motion hearing, that
4 his attorney had got -- it was a female that was an
5 expert witness, and that she was testifying as far as him
6 having some type of autism, because he was going with
7 some type of autism defense, and that when the prosecutor
8 had cross-examined her, that he referred -- said she,
9 quote, unquote, cracked under pressure, and that she was
10 suffering some type of disability, whether it be autism
11 or some type of anxiety herself, and that she didn't want
12 to proceed. Also, that the prosecutor had pointed out
13 the fact that she wasn't licensed to practice in Iowa.
14 So since she didn't want to proceed as far as, like,
15 being a material witness in this case, she wanted to give
16 him a refund or a partial refund, and he said that he was
17 going to take that and apply it towards a new
18 psychologist to go with his autism defense or something
19 like that.

20 Q. Are you saying that the defendant indicated to you
21 that he wanted to get a refund from this expert?

22 A. Yes, because -- yes, he didn't want her to proceed.
23 He was going to go with a different psychologist.

24 Q. At some point throughout your conversations with the
25 defendant, did you have an opportunity to discuss his

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1 charge relating to the distribution of any video within a
2 chat group?

3 A. Yes. He said -- okay, he said that he had
4 encountered the lady who had sent him the videos through
5 some -- he referred to it as "taboo," so I don't know if
6 that was a site or just the name he said for it, but it
7 was also some type of chat group that he had joined. And
8 this chat group, the leader of the chat group, he had
9 mentioned to him that he had received some new pics and
10 this porn tape, or this tape of the minor, and that the
11 person had wanted to see it. So he said that -- well, he
12 mentioned he was going to send it. Then he thought twice
13 about it. And then he said -- then the person had
14 mentioned to him like, "Hey, whatever happened to that
15 video," so he ended up sending it.

16 Q. When you say "the person," are you talking about the
17 perceived leader of the chat group?

18 A. Yeah, the leader of the chat group, because he said
19 he didn't want the leader of the chat group -- like, he
20 didn't want to fall out of favor and possibly get kicked
21 out of the group, is what he told me.

22 Q. Did he give you any information about why it was
23 that he wanted to stay in the chat group?

24 A. He had said something that he had mentioned to the
25 person of the chat group, that in prior chat groups of

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1 that nature, that -- it was something about like he had
2 encountered a lot of them that had homosexuals and didn't
3 have real women and like catfish-type scenarios. And
4 when he had mentioned this to the leader of the chat
5 group, that the leader of the chat group had told him,
6 yeah, there's some of that, but there's also real women,
7 so he was content with that.

8 MR. EISENBERG: I'm sorry, Judge, I couldn't
9 hear. Something "women"? "There's also" what?

10 THE WITNESS: That there was also real women in
11 the chat group.

12 MR. EISENBERG: Thank you.

13 BY MS. DUPUICH:

14 Q. So the defendant indicated to you that he had
15 previously been in groups reflecting individuals who
16 maybe were not real females; is that accurate?

17 A. Yes, exactly.

18 Q. And did the defendant express to you his interest in
19 remaining in the chat group?

20 A. Yes.

21 Q. What information did he share with you, if any,
22 about the video that he received from the woman?

23 A. He said that he had -- he said he also had received
24 some pictures of like -- I think it was like breasts, and
25 then, that when he had received the video, that he said

1 that it was -- okay, like when you're texting back and
2 forth, I think on his text it said something like "What
3 is this?" So he sent that to the administrator. His
4 whole thing was to be able to say like, "Oh, I was saying
5 'What is this' like 'What is this?'" But that he really
6 meant like -- like if -- like if a person receives some
7 news and then you're expecting something else and then
8 when it comes, you're like, "Oh! What is this?" But
9 then he was going to try to spin it for the Court to be
10 like he didn't know what it was and that -- and he said
11 that -- his exact words was -- his thing was with the
12 courts, to try to make it seem like he only forwarded
13 that because of his autism situation and that -- oh, he
14 also had studied like a lot of -- read a lot of material
15 on autism and stuff like that.

16 Q. Okay. I'll ask you about that in just a second.
17 Did he indicate any information to you about whether the
18 video he received from the woman was from another
19 country?

20 A. Yes, yes, he said something like it was from London
21 or something like that and that it was the woman and her
22 daughter. And then, when I had asked him like "A woman
23 and a daughter," so then he said something like the plan
24 was to have a three-some with these two. So I was like
25 "Wouldn't it be incest?" And he said that, "No, it's the

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1 same" -- he just shrugged it off like "Same thing as
2 having sex with two twins," so . . .

3 Q. So defendant expressed to you that the purpose of
4 sending the video was to remain in the chat group?

5 A. Yes, yes, to maintain favor with the leader, so he
6 wouldn't be kicked out of the chat group for any reason.
7 For some reason, he wanted to stay on the leader's good
8 side.

9 Q. Now, you indicated that the defendant expressed to
10 you that he had some knowledge about autism. What
11 comments or what information did he share with you about
12 his autism or potential autism defense?

13 A. He told me that he had a co-counsel. There was
14 another lawyer from New York that wrote a book on autism.
15 And that after reading his book, he had received a lot of
16 information on how he could try to apply that to this
17 situation. That is what caused -- like he's highly
18 impressionable or something like that. And it was
19 something about this whole autism defense that he felt
20 that if he could play the role and seem to have autism,
21 that it would help him receive just the possession, which
22 had the no 5-year mandatory minimum. He also said --
23 yeah, yeah, that's it.

24 Q. Do you recall whether or not he shared with you any
25 information about marijuana being found or anything with

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1 respect to that?

2 A. Yes, he said also that at the time he was arrested,
3 they had also found some marijuana, but that he wasn't
4 being charged with that to his knowledge.

5 Q. I think the last question I have for you is do you
6 recall whether the defendant expressed to you anything
7 with respect to a possible trip to the Philippines?

8 A. Oh, yes, he had also said that if he knew back then
9 what he knew now, like all this money that he's paying
10 for legal fees and all that, that he would have been
11 better off just going to the Philippines. It would have
12 been way more cheaper and he wouldn't have got in all
13 this trouble, and he could just do whatever he wanted to
14 as far as this whole child sexual thing.

15 Q. And how -- how did that comment strike you?

16 MR. EISENBERG: Relevance, relevance.

17 THE COURT: The Rules of Evidence don't apply
18 at a sentencing hearing. So you may answer the question
19 and the Court will accept it for whatever value the Court
20 finds.

21 A. It struck me as unremorseful. I had -- 31 years ago
22 I was charged with a sexual offense myself, which I pled
23 guilty to. And I felt that part -- which was like the
24 biggest shame in my life, the thing I'm most regretful
25 for and ashamed of my whole life, so I felt that --

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1 there's no excuse, but, like, the circumstances leading
2 to it, I felt that he wasn't, like, remorseful, that he
3 was just trying to think of how to get out of the
4 situation, that he wasn't trying to think of how to
5 better himself or how to correct the problem that he has,
6 but how to do -- to commit this crime and get away with
7 it. Like, it wasn't like "Oh, I shouldn't have. I wish
8 I wouldn't have." It was more so "I wish I would have
9 did it this way so I could have got away with it." And I
10 just felt that for a guy that -- like, he told me -- if
11 you're telling me -- you're telling me that you did this
12 and you're telling me about your defense and all this you
13 do, and I'm sitting there saying to myself, "Wow, you
14 sound pretty convincing," so I can imagine to a jury, you
15 just might convince them. So I just felt like, I don't
16 know, that I needed to say something, because he
17 expressed to me his lawyer is trying to talk him -- to
18 take a copout and he wouldn't do it, his mother, several
19 people. And then I just knew that by me being a witness
20 in this case, I knew that as soon as he heard my name,
21 he'd plead because of all the stuff he told me.

22 Q. Was part of the reason that you came forward the
23 comment about the Philippines?

24 A. Yeah, yeah.

25 MS. DUPUICH: I don't have any other questions

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1 for this witness. Thank you.

2 THE COURT: Thank you. Cross-examination.

3 MR. EISENBERG: Judge, I'm having a very
4 difficult time seeing him. Is there any way we can put
5 him over here.

6 THE COURT: No, because of the security in the
7 courtroom, he's going to have to remain there. You can
8 move. If you wish, you can move over to the lectern.

9 MR. EISENBERG: How about -- is this okay?

10 THE COURT: Yes, certainly.

11 CROSS-EXAMINATION

12 BY MR. EISENBERG:

13 Q. Mr. Gregory, how many convictions do you have?

14 A. A total of three that I can think of.

15 Q. All right. And so one was 31 years ago, and that
16 was a sex offense?

17 A. Yes.

18 Q. And what -- what about after that?

19 A. After that, it was armed robbery -- I mean, no, the
20 armed robbery was with the sex offense. That was one.
21 There was a pistol, a gun, which is a UUW. And the third
22 was a burglary.

23 Q. What are you in jail for now?

24 A. Failure to register as a sex offender.

25 Q. I'm sorry?

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1 A. Failure to register as a sex offender.

2 Q. Is that a state charge or federal charge?

3 A. It's federal.

4 Q. Okay. Was your sex crime federal as well?

5 A. No.

6 Q. And what's your sentence right now?

7 A. I have no sentence.

8 Q. Why are you being held?

9 A. I'm -- I'm confused as to what you mean.

10 Q. Well, you're in jail right now, right?

11 A. Yes.

12 Q. What is putting you in jail right now?

13 A. For a failure to register as a sex offender.

14 Q. I understand that. What is your sentence on that

15 charge?

16 A. I haven't been sentenced.

17 Q. Okay. So you are on a -- you're not on probation or

18 anything, are you?

19 A. No.

20 Q. Okay. So you are being detained because you

21 couldn't post bail?

22 A. True, yes, there is no bail.

23 Q. Is that a federal charge or a state charge?

24 A. It's a federal --

25 Q. Is that a federal charge or a state charge, failure

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1 to register as a sex offender?

2 A. It's a federal charge.

3 THE COURT: Mr. Eisenberg, it may help you to
4 know in this district we have a hearing on determining
5 whether somebody is going to be released. Unlike other
6 districts, we seldom have people post bail. They're
7 either released on personal recognizance or they're
8 detained pending trial. In this particular case, the
9 magistrate judge ordered this defendant detained pending
10 trial in this matter without posting bond and without
11 that possibility.

12 MR. EISENBERG: Thank you.

13 BY MR. EISENBERG:

14 Q. How long have you been in jail on this charge?

15 A. Since mid November.

16 Q. Okay. And how many meetings have you had with
17 government agents about your discussions with
18 Mr. Buttikofer?

19 A. I met with the marshal once, and then with the
20 marshal and prosecutor and my lawyer. Two, a total of
21 two.

22 Q. Two total. And when were you in the cellblock with
23 Mr. Buttikofer?

24 A. From November of last year, up until January of this
25 year.

1 Q. So two months, right?

2 A. Yes.

3 Q. And you're not an expert on autism spectrum
4 disorder, are you?

5 A. No, I'm not.

6 Q. And you're hoping, by the way, that you get some
7 benefit for your testimony today, right?

8 A. Am I hoping? Well, I'm hopeful, but I wasn't
9 promised or guaranteed anything.

10 Q. I respect that. But you're not just testifying
11 because you are a good samaritan, are you?

12 A. Well, I'm testifying because I felt like it was the
13 right thing to do. And I felt that what -- from what
14 your client told me, that you had even tried to talk him
15 into taking a copout. I mean, you asked me. I'm telling
16 you. You would -- he would --

17 Q. Could you answer my question, sir?

18 A. Your question was again, sir?

19 Q. Yeah. You're not testifying here because you are
20 just a good samaritan. You are testifying because you
21 are hoping the government will give you some concession
22 for this, right?

23 A. I'm hoping for a concession, and I'm also -- but
24 nothing is guaranteed, and I'm also doing so because I
25 feel that it's the right thing to do.

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1 Q. Sure. And did you feel that was the right thing to
2 do when you had all your other criminal charges?

3 A. To -- I'm confused with what you mean.

4 Q. You told me that you felt -- you told the government
5 you felt like he wasn't accepting responsibility for his
6 behavior, right?

7 A. Well, if you check my -- my criminal charge, you'll
8 see that I took a copout on each one of them.

9 Q. Okay.

10 A. I -- I owned up to my responsibilities to the law as
11 far as my mistakes.

12 Q. I respect that. But the question was --

13 MR. EISENBERG: Could you read the question
14 back, Madam Court Reporter, please?

15 (Whereupon, the requested portion of the record was
16 read by the court reporter.)

17 Q. And that's why you came forth, right?

18 A. Yes.

19 Q. And were you accepting responsibility for your sex
20 offender convictions when you failed to report as a sex
21 offender?

22 A. Was I accepting responsibility? I was actually --
23 if you want to talk my case, what happened was, I
24 didn't --

25 Q. Just answer my question, please.

1 A. Was I accepting responsibility?

2 Q. Yeah, by not registering as a sex offender for your
3 prior sex offender conviction.

4 A. By -- I committed a crime. I accepted
5 responsibility when I pled guilty.

6 Q. Okay. Why didn't you register as a sex offender?

7 A. I didn't do so in a timely manner.

8 Q. How many other people were in that dorm with you and
9 Mr. Buttikofer?

10 A. I believe a total of 13 of us.

11 Q. Okay. And so when you had these discussions with
12 Mr. Buttikofer, did you have a private area that you
13 could go talk and nobody else would hear you?

14 A. Sometimes we would sit there; it was like a chair or
15 table right below our bunk. Sometimes we would sit at
16 the table and talk. Sometimes we would come over by my
17 bed and sit there and talk. Sometimes we would sit at
18 this other table that was off to the side and talk.
19 Whenever we talked about things of that nature -- I mean,
20 sometimes though we would just talk just at random.

21 Q. So nobody else could hear you though, right?

22 A. I wouldn't say no one could hear us.

23 Q. By the way, in that cellblock with you and
24 Mr. Buttikofer was some fellow that had actually been --
25 had gone to the Philippines and got convicted for having

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1 sex with a child, correct?

2 A. I don't know.

3 Q. You said that you didn't feel that he was accepting
4 responsibility. Did you know that he was interviewed by
5 the FBI on the day of his arrest?

6 A. I'm not sure.

7 Q. Did you know that he told the FBI that he thought he
8 had probably sent the video to the administrator of the
9 chat room?

10 A. I don't know.

11 Q. Did he tell you that?

12 A. He told me that he sent it to the leader of what he
13 believed to be a chat group, who turned out to be an FBI
14 agent.

15 Q. What did he say he did with his account after he
16 sent that video to the administrator?

17 A. I don't recall what he did with his account.

18 Q. Okay. Did he tell you that he deleted it, the app,
19 after he sent that to the administrator?

20 A. I don't recall.

21 Q. That would kind of rebut your argument that he sent
22 the video to the administrator so he could stay in the --
23 in the chat room, right, if he did that?

24 A. I'm not sure. All I know is what he told me. I'm
25 not sure what that would do as far as some -- doing so or

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1 not doing so. I don't know.

2 Q. You said that he was attempting to fake the autism
3 spectrum disorder so he could play it to the jury; is
4 that right?

5 A. Exactly.

6 Q. He didn't go to a jury though, right?

7 A. No, because by me coming forward, I believed that's
8 what caused him to take a plea.

9 Q. But at the time he pled, you weren't in the
10 cellblock at that time, were you?

11 A. No, at that time I had left. He had pled I believe
12 shortly after. At the time that I was in the cellblock
13 with him, he was talking to you, and he was on the phone
14 with you for hours he told me, and that, from the amount
15 that you charge per hour, that the bill was going up to a
16 thousand or better, and that --

17 Q. Let me just interrupt you so we can get back to the
18 question.

19 A. Okay, uh-huh.

20 Q. You were gone from the time that -- you were gone
21 from the time that -- out of that cell when he pled,
22 right?

23 A. I was gone from the time that he pled?

24 Q. Yeah.

25 A. Yes, yes.

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1 Q. Okay. So how did you find out he pled?

2 A. Because once I gave this information to the
3 authorities, it was said that I would probably -- he was
4 set for trial, so I would have probably have had to come
5 testify at his trial, but then by him turning around --
6 after I came forward, he pled guilty, so then it was
7 brought to my attention that there would be no trial
8 because, as a result, he pled guilty, so that's how I
9 knew.

10 Q. The government told you that, right?

11 A. I can't -- I don't know. No, I believe it was my
12 attorney.

13 Q. Your attorney, okay.

14 A. I believe it was my attorney.

15 Q. All right. So let's go back --

16 A. As a matter of fact, it was my attorney.

17 Q. -- and then I'm done. This autism spectrum
18 disorder, you're not an expert in this, right?

19 A. Far from it.

20 Q. Do you know what -- how a therapist who specializes
21 in that diagnoses somebody with that?

22 A. I have no idea.

23 Q. Okay. And so, in fact, you don't know that one of
24 the portions of that diagnosis is getting a history from
25 a parent or a wife or something to help make that

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1 diagnosis, right? You don't know that?

2 A. I have no idea.

3 Q. Okay. And Mr. Buttikofer never told you that he was
4 going to call his mother and tell her to lie to these two
5 therapists so that he could do this charade with the
6 autism spectrum disorder, right?

7 A. I never said anything about him calling -- anything
8 about his mother lying or him telling me anything about
9 his mother lying.

10 Q. Thank you.

11 MR. EISENBERG: That's all I have, Judge.
12 Thank you.

13 THE COURT: Any redirect examination?

14 MS. DUPUICH: No, thank you.

15 THE COURT: All right. Thank you. You are
16 excused as a witness.

17 The government may call its next witness.

18 MS. DUPUICH: Thank you, Your Honor. The
19 government calls Joshua Heer.

20 THE COURT: Good morning, sir. Please step up
21 here by the court reporter and raise your right hand and
22 I'll place you under oath.

23 JOSHUA HEER,
24 called as a witness, being first duly sworn or affirmed,
25 was examined and testified as follows:

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1 THE COURT: Thank you. Please have a seat in
2 the witness chair. And when you are comfortable, I'd
3 like you to pull that chair up. And when you are
4 comfortable, please state your name and spell your name
5 for the court reporter.

6 THE WITNESS: Joshua Heer. J-O-S-H-U-A, middle
7 initial R., Heer, H-E-E-R.

8 THE COURT: Thank you.

9 Ms. Dupuich, you may proceed.

10 MS. DUPUICH: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. DUPUICH:

13 Q. What is your occupation and current assignment?

14 A. Currently, I'm a sergeant of investigations with the
15 Illinois State Police, Rockford, Zone 2, Major Crimes.

16 Q. Could you please briefly state your background,
17 training, and experience in law enforcement?

18 A. 2002 I began a career with the City of Berlin, which
19 is a small city in Wisconsin, worked as --

20 MR. EISENBERG: I'll stipulate to his
21 qualifications if that would speed this up.

22 THE COURT: I would just as soon I think hear
23 them myself so I have some idea of what his background
24 is. So thank you.

25 A. In 2002 after graduating with a four-year degree in

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1 criminal justice, started at the City of Berlin. It's a
2 small city in Wisconsin. Worked there for 22 months.
3 After that I went to work for the City of Monroe, which
4 is a City of about 10,000 in Wisconsin. I did patrol, I
5 did undercover narcotics for about 3 years there, but in
6 total with Monroe I was there for about 9. So after
7 11 years in law enforcement, I went to work with the
8 Illinois State Police in 2013. 2013 to roughly 2018 I
9 worked patrol. In 2018 I began as an investigator with
10 Zone 2, Rockford, where I am now. Since then, I've been
11 with the Illinois Attorney General's Office, ICAC Task
12 Force, Internet Crimes Against Children's Task Force,
13 since I believe May of 2019, maybe before that.

14 Q. Are you the investigator assigned to an Illinois
15 case involving the defendant from the fall of 2019?

16 A. Yes, ma'am.

17 Q. How did this case first come to your attention?

18 A. I believe it was September 23rd of 2019, sometime in
19 the afternoon, narcotics Special Agent Merritt brought it
20 to my attention that he had recently spoken with a
21 confidential source. The confidential source had
22 indicated they had met an individual in Dubuque, Iowa,
23 and during that conversation, that first meeting in
24 person, that individual had indicated they were into
25 no-limit sex. While that informant talked to that

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1 individual, the informant asked what that meant. The
2 individual in question then told the informant that
3 no-limit sex meant that -- referred to a time in his life
4 with a prior girlfriend or female acquaintance/friend.
5 The individual -- the female had drugged an approximate
6 5-year-old child so he could have oral sex with the
7 child, and the adult female could then have oral sex on
8 him and then he could then ejaculate on the child.

9 Q. Is the individual whom you are referring to
10 ultimately determined to be the defendant seated in
11 court?

12 A. It is.

13 Q. Is the confidential source you are referring to a
14 female?

15 A. It is.

16 Q. And you obviously had an opportunity to meet and
17 speak with this female in person, correct?

18 A. I did.

19 Q. Did you determine at some point whether or not she
20 had children?

21 A. I did.

22 Q. Approximately how many, if any, and their ages if
23 you know?

24 A. She had four. At that time, she had a 5-year-old
25 male; 8-year-old, 10-year-old, and 16-year-old female

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1 daughters.

2 Q. As a result of the information provided to you by
3 this confidential source, how did you decide to proceed
4 next in your investigation?

5 A. As all investigations, first try to verify and
6 validate anything that was said. Look at Facebook, see
7 if I can find a picture of who she referred to as D.J.
8 Buttikofer. Found that individual. Went to -- we have a
9 state-ran intelligence agency, STIC. Run the information
10 through STIC, other law enforcement record databases, to
11 try to identify the person. It wasn't long until I was
12 able to actually identify who she thought was D.J.
13 Buttikofer as Douglas J. Buttikofer. Get the address, do
14 surveillance, confirm. We weren't able to actually
15 locate him personally at that time. And with -- with her
16 indicating that they spoke freely, hours and hours and
17 hours a day by text, by phone conversation, by Snapchat,
18 I reached out to the local state's attorney in Jo Daviess
19 County to see if they could authorize what in Illinois we
20 need -- because we're a single-party state for electronic
21 recording, we need what's called an eavesdrop order.
22 It's actually granted by a judge in Illinois.

23 Q. And did you ultimately obtain an eavesdrop order?

24 A. I did, the very next day.

25 Q. On or about September 24 of 2019 then, did you have

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1 an opportunity to meet with this confidential source in
2 person and examine some messages on her cellular
3 telephone?

4 A. I did. So in order to have an eavesdrop order
5 signed, that individual -- the informant needs to, one,
6 agree to having her -- his or herself recorded and they
7 also need to sign the order itself. So myself and a
8 female special agent, Special Agent Montes, went to a
9 predetermined location, picked her up, transported her to
10 the City of Galena for that.

11 Q. And then you -- you were ultimately with her on
12 September 24th, correct?

13 A. Yes.

14 Q. Before you came to court today, did you have an
15 opportunity to review what's been previously marked as
16 Government's Exhibits 6?

17 A. I did.

18 Q. Showing you what's been marked as Government's
19 Exhibit 6, then, do you recognize the first page of this
20 exhibit, which appears to be a Facebook picture?

21 A. I do.

22 Q. Where is that from?

23 A. So my informant told me who this person was to her.
24 I found that on Facebook, just simply searching D.J.
25 Buttikofer on my own covert Facebook account. I then

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1 screen captured with my -- my work phone that photo to
2 then show that to the informant as a means of identifying
3 and making sure we were speaking about the right person.

4 Q. So page 1 of 12 on Government's Exhibit 6,
5 document 140-6, is a -- a Facebook screenshot that you
6 personally took of the defendant, correct?

7 A. Correct.

8 Q. The subsequent pages in Government's Exhibit 6,
9 which are pages 2 of 12 through 12 of 12, those appear to
10 reflect screenshots from Snapchat; is that accurate?

11 A. Correct.

12 Q. Where are those from?

13 A. So as myself and the other agent picked up the
14 informant and transported her to the Jo Daviess County
15 Courthouse, she began receiving messages from D.J., from
16 Mr. Buttikofer. Snapchat is peculiar in a way that if
17 you -- if you take a screenshot of your -- using your own
18 phone of a message or a photo within Snapchat, you alert
19 the other person that you've screen captured. So as a
20 result, rather than have that person, the informant,
21 screen capture those images herself and alerting him to
22 that, I took those photos with my own department-issued
23 cell phone.

24 Q. So what's been marked here as Government's
25 Exhibit 6, pages 2 of 12 through 12 of 12, were taken by

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1 you personally from the CS's cellular phone on or about
2 September 24, 2019?

3 A. Correct, and they were taken in the actual
4 courthouse for Jo Daviess County.

5 Q. And those are true and accurate copies reflecting
6 the screenshots that you took, correct?

7 A. Yes.

8 Q. Now, the following day, on or about September 25th
9 of 2019, did you ultimately participate in some
10 recordings between the female CS and the defendant?

11 A. Yes.

12 Q. And before you came to court today, did you have an
13 opportunity to review what's been marked as Government's
14 Exhibit 7, which is a transcript of recordings?

15 A. Yes.

16 Q. Was that a true and accurate copy reflecting an
17 accurate transcript of those recordings you participated
18 in on or about September 25th of 2019?

19 A. Yes, ma'am.

20 Q. At some point throughout the course of your
21 investigation, in your contact with this female, did she
22 advise you whether or not in speaking to the defendant he
23 had asked her to delete any messages?

24 A. Yes.

25 Q. And what was said?

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1 A. So we've got to back up a day. So the 24th of
2 September, actually, so after we signed the eavesdrop
3 order, she was escorted back to a predetermined location,
4 dropped off. Throughout the evening, she kept in contact
5 with me, and I want to say early evening, late evening,
6 she reached out to me to let me know that she was at a
7 friend's house, and unbeknownst to her and unplanned,
8 Mr. Buttikofer had stopped by, located her, taken her
9 cell phone, went onto Snapchat and their text messages
10 and deleted their conversations and said something to the
11 effect of, you know, if he hadn't been able to delete or
12 make sure they were deleted, that he was going to throw
13 her phone in the river.

14 Q. Were you able to in any way verify any of this
15 information?

16 A. The next day on the 24th, her phone was wiped. It
17 didn't have anything on there from the day before. I
18 can't confirm that he was the one that deleted it. I can
19 just say that that next morning when she told me that,
20 you know, things were gone because he -- he deleted those
21 things; those things were no longer there. I did --
22 there's one caveat to it, during the conversation on the
23 24th, he had expressed a desire to have her go home that
24 day and take pictures of her children's underwear and
25 send them. Later, after his arrest, per a search

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1 warrant, his cell phone was downloaded. Within the
2 confines of what's called a Cellebrite download of his
3 phone, you see images of underwear that were sent to him
4 that day from the CS. You also -- that night, the CS had
5 indicated she had friend requested that account, the
6 D.J. -- D.JButtikofer Facebook account. You can see on
7 the Cellebrite download that very night that he had gone
8 onto her Facebook profile and viewed all of her
9 children's photos, and I believe in reviewing the
10 Cellebrite download, it actually saved those photos of
11 her children onto his phone.

12 Q. All right. So let me ask you, then, the defendant's
13 cellular telephone was obviously recovered as part of
14 your investigation, correct?

15 A. Yes, ma'am.

16 Q. And a Cellebrite extraction was performed by a
17 qualified individual within your agency on or about
18 October of 2019; is that accurate?

19 A. It was performed by the City of Dubuque, because he
20 was arrested in Dubuque, not in Illinois. The warrant --
21 because it's across state lines, it gets a little bit
22 different with how it gets handled, but Iowa did the
23 seizing. Iowa did the Cellebrite extraction.

24 Q. And you obviously had an opportunity to review that
25 extraction, correct?

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1 A. Yes, ma'am.

2 Q. And you mentioned that there was -- you noticed on
3 that extraction some Facebook profile photographs of the
4 CS's children; is that true?

5 A. Yes.

6 Q. Did you notice anything else on the Cellebrite
7 extraction that pertained particularly to your
8 investigation or that was of interest to you?

9 A. Yeah, in particular, which I think you're asking, he
10 had dozens and dozens and dozens -- I mean, he had 62,000
11 or 63,000 images on there. And just by loosely counting
12 there's dozens upon dozens of sexual -- of child erotic
13 photographs.

14 Q. Were those largely females?

15 A. Yes.

16 Q. Prepubescent or pubescent females?

17 A. Both.

18 Q. Did you notice anything with respect to phone calls
19 between the CS and defendant from the time period of
20 September -- or late September?

21 A. Numerous.

22 Q. As in over 300?

23 A. Correct.

24 Q. Ultimately, as part of your investigation, then, was
25 a hotel room rented in Illinois?

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1 A. We made arrangements to make it look like one was
2 rented with a manager. We didn't actually pay for one.
3 They just had one under the informant's name in case
4 somebody called or came.

5 Q. Was the purpose of that hotel room to determine
6 whether the defendant would, in fact, meet the CS and her
7 children?

8 A. Correct.

9 Q. And that did not ultimately occur and the defendant
10 did not show up at the hotel room, correct?

11 A. Correct.

12 MS. DUPUICH: Your Honor, I just have one last
13 question for this witness with respect to Defendant's
14 Exhibit M. I was wondering if I could approach and show
15 it to him.

16 THE COURT: Certainly.

17 MR. EISENBERG: What page are you on?

18 MS. DUPUICH: Let me grab it.

19 THE COURT: Ms. Dupuich, I'm confused. Is this
20 M as in "Mary" or N as in "Nancy"?

21 MS. DUPUICH: M as in "Mary," Your Honor.

22 THE COURT: All right. Thank you.

23 MS. DUPUICH: I'm on page 20 of 23. Docket 1'
24 I think it says '30-5, page 20 of 23.

25 THE COURT: All right.

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1 BY MS. DUPUICH:

2 Q. I know this is difficult to read, but drawing your
3 attention there to Defendant's Exhibit M, as in "Mary,"
4 docket 130-5, page 20 of 23, do you recognize that
5 communication?

6 A. Yes, it's a cell phone conversation between the
7 informant and Mr. Buttikofer.

8 Q. And when was this conversation?

9 A. It looks like on the 25th of September, 2019.

10 Q. What was that date with respect to your
11 investigation?

12 A. That was the day where the informant and the -- and
13 Mr. Buttikofer were talking about getting her children
14 together at a Galena hotel for a meet and greet and
15 possible sexual assault of one of her children.

16 Q. Drawing your attention to page 22 of 23, I know it's
17 difficult to read, but in the middle of the page there
18 appears to be a message that indicates, "Hey, this is all
19 a fantasy for me and not real life." Do you see that
20 message?

21 A. Yes, ma'am.

22 Q. Who wrote that message to your knowledge?

23 A. That is Mr. Buttikofer to the informant.

24 Q. And that would be the night of the hotel room,
25 correct?

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1 A. Yes, ma'am.

2 Q. I was wondering if you could put that into context
3 for the Court in terms of the timeline of your
4 investigation that evening.

5 A. So after Mr. Buttikofer got off of work, he -- and
6 throughout his entire day of work, he was talking to the
7 informant, and they had talked about how her -- what he
8 wanted to do with the children and about maybe
9 facilitating some sort of meet-up that evening. And the
10 informant had said she had a hotel room in Galena and the
11 children were there.

12 After he got off of work, he continued to talk to
13 her about how he was running a few errands and was
14 possibly thinking about coming to Galena. That went on
15 for several hours. And during the entire time, we had
16 surveillance, Illinois state troopers, police, special
17 agents, all following Mr. Buttikofer around the city of
18 Dubuque. It became very obvious that he was not on his
19 way to Galena. And after hours and hours of that
20 conversating, we weren't confident he was ultimately
21 going to come. So I instructed the informant, let's, you
22 know, let's just be done with the conversation between
23 the two of you. And the -- shortly after, like
24 instantaneous of her dropping communication with
25 Mr. Buttikofer, he began texting -- or calling and

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1 texting, and this is one of -- one of those things.
2 After I believe it's nearly an hour of the informant
3 having very little to no conversation, he sends, "Hey,
4 this is all fantasy to me and not real life," and it goes
5 on.

6 Q. And that was after she had not communicated with him
7 for a significant period of time?

8 A. Correct.

9 Q. Now, this was an individual that the defendant had
10 only known for, to your knowledge, approximately, what, a
11 week?

12 A. Not long, yeah, a week is pretty solid.

13 Q. Maybe less than?

14 A. I think he met her -- I think he met her in person
15 on the weekend prior to this, like the 20th or 19th. And
16 I think he saw her maybe a week or two before that and
17 approached a mutual friend of theirs for her phone
18 number.

19 MS. DUPUICH: Thank you, Your Honor. I don't
20 have any other questions for this witness. I'd just like
21 to approach and grab the exhibit.

22 THE COURT: You may.

23 MS. DUPUICH: Thank you.

24 THE COURT: Cross-examination.

25

1 CROSS-EXAMINATION

2 BY MR. EISENBERG:

3 Q. Agent, you just talked -- I'll stand up. You just
4 got done talking about he said it was all a fantasy to
5 him, right? Do you remember saying that?

6 A. Repeat your question.

7 Q. Sure. You just got done saying Mr. Buttikofer said
8 to her, "This is all just a fantasy for me," correct?

9 A. He did text that, correct.

10 Q. You listened to all the phone conversations --
11 strike that. You were with her when she was making these
12 phone calls, right?

13 A. Two out of four. The morning session, correct. The
14 afternoon session, a different agent was with her.

15 Q. And how many times did she try to entice him to come
16 to Illinois by saying, "I want you to live out your
17 fantasy. I want you to act on your fantasy. Let's do
18 this"?

19 A. I think "entice" is a strong word.

20 Q. Coerced, convince, request?

21 A. I think -- I think request, sure. I'm not sure how
22 many times that conversation, and I'm not sure how many
23 times he also did the same.

24 Q. Okay. And, actually, when he said, "This is all a
25 fantasy for me," she told him how disappointed she was

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1 that he wouldn't come, right?

2 A. I would have to look at exactly where that is.

3 Q. Did you bring it?

4 A. What's that?

5 Q. Did you bring all the conversations?

6 A. No.

7 Q. You're telling me you don't remember her saying,
8 "I'm very disappointed in you and I need some time to
9 myself"? Do you remember that?

10 A. Verbatim, no. The -- for me to answer that --
11 you're asking me to remember a specific quote out of I
12 believe it's 92 pages worth of transcripts --

13 Q. Right.

14 A. -- over several hours. I do believe something was
15 said to that fact towards the end, and that was at the
16 end.

17 Q. And that's when she cut him off, when she said "I
18 need some time," and that's why he was texting her,
19 right?

20 A. I can't speak to why your client didn't --

21 Q. Fair enough. You said that there was a Cellebrite
22 download of his phone that was seized when he was
23 arrested, right?

24 A. Correct.

25 Q. And there was a ton of child erotica, right?

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1 A. Correct.

2 Q. And when you are saying that, you are talking about
3 children clothed in modeling positions?

4 A. I would not say modeling, no.

5 Q. Okay. But they had clothes on. How many of those
6 63,000 images that you took or found on the Cellebrite
7 download from his cell phone contained child pornography?
8 None, right?

9 A. Correct.

10 Q. So we know then -- and he didn't know you were going
11 to take his phone, right?

12 A. I have no idea what your client thought.

13 Q. He had no reason to believe that you were going to
14 take his phone, did he?

15 A. I have no idea what your client thought. He was
16 being arrested for grooming, so I would have -- after
17 doing this for a number of years, I would have a belief
18 that if someone thinks they're getting arrested for
19 grooming a child, when they use their own phone to do it,
20 they would have a belief to take the phone, but otherwise
21 I can't testify to what he thought.

22 Q. Well, let's back up for a second. How did he know
23 he was going to get arrested for grooming?

24 A. There was a warrant for his arrest, so when he got
25 arrested.

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1 Q. Okay. I am talking about before that. Before he
2 got arrested, he didn't delete everything off his phone,
3 did he?

4 A. He did delete items off of his phone. He did
5 indicate that in the interview that we had of him, that
6 he deleted items, applications, conversations off of his
7 phone, so he did delete things off his phone.

8 Q. He didn't delete 63,000 images, did he?

9 A. Portions of those were deleted and recovered in the
10 physical analyzer Cellebrite extraction.

11 Q. Let's talk about the informant for a minute. Isn't
12 it true that Mr. Buttikofer wanted to have a relationship
13 with her?

14 A. Repeat that question.

15 Q. Isn't it true that Mr. Buttikofer wanted to have a
16 relationship with the informant?

17 A. I -- from an aspect of him telling us in the
18 interview, he believed she was a prostitute. That's --
19 that was the relationship he told me he wanted to have
20 with her. In speaking with the informant, the
21 relationship -- I believe it was the same. I guess I
22 don't know the definition of "relationship" that you are
23 trying to get at.

24 Q. Fair enough. Do you remember in one of the 92 pages
25 of phone conversations where he said to her, "I'd like to

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1 have sex with you all night, and you are going to end up
2 being very sore the next day"?

3 A. I do recall that.

4 Q. What did she get arrested for?

5 A. I have no --

6 Q. Oh, come on.

7 A. I have no knowledge. I believe it was a drug
8 offense, but I have no knowledge.

9 Q. You come here today to testify and you don't know
10 what the informant's background is?

11 A. She wasn't my informant, sir.

12 Q. You come in here to testify and you don't know what
13 the informant did to be in this position?

14 A. I did ask and answer that. You asked. I said I
15 believe it was a narcotics offense. It was not by the
16 Illinois State Police. It was by a different agency.
17 The Illinois State Police just simply used her as an
18 informant. I was not her handler. Another agent, as I
19 testified to, Special Agent Mike Merritt, was her
20 handler. I was not.

21 Q. What did she get out of this?

22 A. I do not know. Again, the Illinois State Police did
23 not arrest her. The City of Dubuque or the County of
24 Dubuque did. I was not her handler. Special Agent
25 Merritt was. I do not know what she received out of

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1 this. We had no conversation between the two of us.

2 Q. Fair enough. When was it that Mr. Buttikofer
3 supposedly -- well, let's back up. Let's get the dates
4 right. The date of his arrest is what?

5 A. I -- offhand, I don't remember. I would have to
6 look at my report.

7 Q. What were the dates of the phone calls that you
8 recorded?

9 A. The 25th of September, 2019.

10 Q. Okay. And when did you first become aware she was
11 going to help you?

12 A. The 23rd.

13 Q. Okay. So we know from the 23rd to the 25th she's
14 working with you, right?

15 A. Correct.

16 Q. Okay. And you are saying that on the 24th is when
17 he went to her house, got her cell phone, and deleted her
18 Snapchats. How did that happen?

19 A. I can't speak to that. All I can tell you is what I
20 was told by the informant.

21 Q. Fair enough. So you don't have any personal
22 verification that he did that, do you?

23 A. No, sir.

24 Q. And again, you are -- strike that.

25 MR. EISENBERG: I don't have anything else,

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1 Judge. Thank you.

2 THE COURT: Any further redirect examination?

3 MS. DUPUICH: No, thank you, Your Honor.

4 THE COURT: Thank you, Sergeant. You may step
5 down. You are excused as a witness.

6 Ms. Dupuich, you don't have any other witnesses; is
7 that correct?

8 MS. DUPUICH: That's correct, I don't.

9 THE COURT: Mr. Eisenberg, do you wish to call
10 any witnesses?

11 MR. EISENBERG: No, Your Honor, I don't.

12 THE COURT: All right. That completes the
13 evidence in this case, then. All right. At this stage,
14 the only thing left that I am aware of is the ruling on
15 the defendant's motion for a downward variance and the
16 ultimate disposition in this case. It is the defense
17 motion, but it is my general practice to hear first from
18 the government regarding any downward variance motion
19 because that then gives the defense counsel an
20 opportunity to respond and then make the defense's own
21 argument. So I'll hear first from Ms. Dupuich, then I'll
22 hear from Mr. Eisenberg, and then I'll hear from the
23 defendant, if he wishes to say anything to me, and then I
24 will impose sentence. Before we go there, Ms. Dupuich,
25 is there anything else you believe we need to handle?

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1 MS. DUPUICH: No, Your Honor.

2 THE COURT: Mr. Eisenberg?

3 MR. EISENBERG: No, Your Honor, I -- my
4 argument was -- I don't want to be redundant. I was just
5 going to respond to some things the government had put in
6 her sentencing memorandum.

7 THE COURT: And that's fine, and I'll give you
8 an opportunity to do that. We'll hear from her first,
9 and then you can respond to anything she says orally or
10 in her memorandum as well.

11 MR. EISENBERG: Thank you.

12 THE COURT: Very good. So Ms. Dupuich.

13 MS. DUPUICH: Thank you, Your Honor.
14 Similarly, I'm not going to repeat things that I had
15 already put in our brief. I did want to point out just
16 some concerns, some general concerns, that the government
17 had with respect to Defendant's Exhibit P, as in "Paul,"
18 and Exhibit R, as in "Roger," which are the two
19 examinations from the -- psychological examinations.
20 There is some concern here related to the reliability of
21 those exhibits. I think one concern that the government
22 has would be the limited records that were reviewed to
23 generate these evaluations. Neither evaluator appears to
24 have had access to discovery materials. Additionally,
25 they both appear to have reviewed and taken into

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1 consideration the report by Ms. Christiansen at docket
2 61. So to the extent that they are basing any of their
3 opinions off of her evaluation or information, the
4 government would proceed with caution.

5 Defense Exhibit R indicates that he -- the evaluator
6 did review the PSR; however, that's a relatively limited
7 universe of information. It's a little unclear whether
8 the author of Defendant's Exhibit P reviewed the PSR.
9 It's possible that I missed it, but it says "review of
10 records" on page 1, so I'm not entirely sure what that
11 means. I don't know what this evaluator considered,
12 other than Candice Christiansen's report and an interview
13 with the defendant and his mother. I also don't know
14 what her credentials are or her background, training, or
15 experience.

16 To the extent the evaluator in Defendant's Exhibit R
17 reviewed the PSR and is providing an opinion concerning
18 whether this defendant is a risk to commit a hands-on
19 sexual offense, the government would ask why he didn't
20 ask the defendant any questions about paragraph 48 in the
21 PSR. And just to clarify, the government is not asking
22 the Court to consider an unconvicted offense for
23 sentencing purposes. The government is simply asking why
24 a professional who is evaluating whether or not an
25 individual is a risk to commit a hands-on sexual offense

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1 wouldn't ask that individual about the facts and
2 circumstances concerning him being charged with a
3 hands-on sexual offense.

4 With respect to Defendant's Exhibit R, page 3 of 13,
5 the government would note defendant stated he had a core
6 group of friends under his educational history. This may
7 be inconsistent with an earlier statement he made to
8 Ms. Christiansen that he "didn't have any friends" in
9 school, which is reflected on docket 61, page 8. Also,
10 on Defendant's Exhibit R, page 8 of 13, the defendant
11 stated that he went 6 months with no porn and then
12 relapsed by looking at Kik and a video was sent and "that
13 was it." The government would note that this is
14 inconsistent with paragraphs 20 and 22 of the PSR, which
15 reflect that child pornography was accessed over a period
16 of time from approximately February 7th through
17 March 30th. Also defendant's statement in this report "a
18 video was sent and that was it," that's all inconsistent
19 with the facts of the distribution. He sent two separate
20 videos of abuse, a total of three times; one video twice,
21 one video once. Finally, defendant's statement, "This is
22 not something I was searching for ever," at the top of
23 page 8 of 13, in docket 130-10, that's entirely
24 contradicted by the evidence.

25 With respect to the bullet points on Defendant's

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1 Exhibit R, on page 10 of 13, the government is unclear as
2 to why this evaluator lists the only factor pertaining to
3 defendant as "relationship issues."

4 THE COURT: I'm not sure I understand what you
5 mean by that.

6 MS. DUPUICH: He says on page 9 of 13, if you
7 look at the third paragraph, he says, "Of these 20 listed
8 risk factors, Mr. Buttikofer is characterized by only one
9 factor: relationship issues. The remainder do not appear
10 present." Do you see that, Your Honor?

11 THE COURT: I do, thank you.

12 MS. DUPUICH: The government is not clear what
13 the second bullet point "supervision failure" is or why
14 defendant would not be considered in this category, as he
15 was on pretrial release for grooming at the time he was
16 arrested for the instant offense. It also appears
17 defendant would be characterized as the bullet point
18 "victim of child abuse." That's on page 10 of 13, about
19 halfway down on the bullet points. He himself alleges in
20 paragraph 53 of the PSR that he was a victim.

21 Finally, under the "minimization or denial of sex
22 offenses," which is the third from the last bullet point,
23 that has remained a consistent theme throughout, as
24 reflected in Government's Exhibits 1, 2, and elsewhere.

25 Under his conclusions, the author indicates on

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1 page 12 of 13, he has no prior criminal history. That's
2 inaccurate. He states there's no evidence of substance
3 abuse. That's inconsistent with paragraph 64 of the PSR
4 and the facts and circumstances of the instant offense
5 where he was in possession of marijuana. The government
6 would take issue with the opinion offered on page 13 of
7 13, document 130-10. The author says, "There is no
8 evidence he would ever commit a hands-on sexual offense"
9 and believes -- the government's position is this opinion
10 is just not supported by the evidence.

11 The government would also express to the Court the
12 value of these reports is limited, as the government is
13 not in a position to effectively cross-examine these
14 witnesses.

15 With respect to the sentence and a downward
16 variance, the defendant in this case obviously
17 distributed two separate videos of the sexual abuse of a
18 toddler by her mom in an online chat group. It appears
19 to be in order to secure his position within the group.
20 On the defendant's cellular telephone were images and
21 videos of child sexual abuse, which he accessed. These
22 events occurred while the defendant was on pretrial
23 release for grooming in the state of Illinois. For all
24 the reasons articulated in the government's brief, we do
25 not believe a downward variance is justified. We believe

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1 a top of the range sentence is absolutely warranted.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 Mr. Eisenberg.

5 MR. EISENBERG: First of all, I want to point
6 out we are not blaming his behavior on autism spectrum
7 disorder. We are just saying this is the big picture,
8 and I think it's important for the Court to understand
9 what -- who the defendant is. Now, again, the government
10 is saying it's all manufactured. We heard from the
11 informant. We heard from the prosecutor. But nobody
12 said, "Well, jeez, Mr. Buttikofer got up and had -- asked
13 his mother to lie about his background." There's no
14 evidence of that. And a lot of that report from Megan
15 Farley and from Candice Christiansen -- and I'm the first
16 to admit Candice Christiansen's testimony left a lot to
17 be desired. But Megan Farley's report did not, and
18 that's part of it. The diagnosis has to do with getting
19 a history. And they took the history from Cherie
20 Schilling and made her -- and she made her diagnosis.

21 As far as his criminal history goes, as I'm looking
22 on paragraphs 41 through 43 of the presentence report,
23 possession of alcohol -- I don't think that's even a
24 crime in Wisconsin; I don't know about here -- when he
25 was 19. Another one, page -- at 19, possession of

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1 alcohol. A third one at age 25, public intoxication.

2 Now, I suppose we could make the argument that, oh,
3 this Illinois case says that he was going to do
4 something, and I have a real problem with this, Judge.
5 If I have a discussion with you and I put that in the
6 brief, about I'm going to rob a bank and I don't do
7 anything, does that mean I committed a bank robbery?
8 It's the same thing here. And that informant wanted him
9 to come to Illinois to work off some charge. It's
10 interesting that the agent couldn't even tell you what
11 the charge was. Some narcotics violation. But she
12 wanted to do something to help herself.

13 I want to talk a little bit about some of the
14 arguments that were made in the government's brief.
15 Specifically, under page 3, the history of the offense.
16 She said that -- or the government said that we said that
17 the agent asked, "begged" him for the videos. Those were
18 my words, but I still stand by them. At 15:26, the
19 undercover agent, "I would love to see that," after
20 Mr. Buttikofer has talked about the videos. At 15:37,
21 "Man, can I see." At 15:43, "I'd love" -- "I'd love to
22 see that." At 16:00, "Did you send it?" So at least we
23 have a 34-minute period where the agent -- or the
24 undercover agent is trying to get Mr. Buttikofer to send
25 that video. And you know what? He sent it. We don't

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1 dispute that. But it wasn't like, "Oh, here's the video
2 and here it is, Agent." And if he wanted to do that to
3 stay with -- to stay in the group and be this -- get in
4 the good graces of the administrator, why did he delete
5 the Kik app? Well, what the government says. He didn't
6 want to get caught. I agree with that. But he was
7 also -- if his goal was to stay with the administrator,
8 why did he delete that app? Because not only was he
9 trying to not get discovered, but he's -- he's sick of
10 himself. He's got an addiction. He knows it. He's
11 disgusted. And he doesn't want to do it.

12 Now, then we get into this argument about, oh,
13 there's all this talk about a VPN so that he can hide
14 himself. Where's the evidence of the VPN? There isn't
15 any.

16 Next issue, the government says that Mr. Buttikofer
17 lied to Agent Pfeiler when he was interviewed after his
18 arrest on April 1st. Okay. At first he did. Well, why
19 did he do that? Because he was scared. He told them he
20 erased the Kik app. He was scared and ashamed. That's
21 at 59:15. At 22:14 he did not save any Abby videos and
22 he deleted them. That's true. At 33:40 -- and this is
23 Government's Exhibit -- what did I do with that? I just
24 had it. Where is that? I'm sorry, Judge.

25 THE COURT: No, take your time.

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1 MR. EISENBERG: It's the list of -- oh, here it
2 is. Government's Exhibit 2, at 33:40, he's willing to
3 make a Kik account with the interviewing agents to try to
4 identify Abby and make that kind of abuse stop. At
5 40:15, he says, "This is a sickness. I've been going to
6 sex offenders anonymous." At 1:08, "I'd like to
7 cooperate. I'm not asking for an attorney." At 1:08:50,
8 it is possible to -- that he sent the video to Johm,
9 J-O-H-M, the administrator, and Agent Pfeiler tells him
10 at 1:17:40, "Anything you can do will help you." But, of
11 course, he's worried about going to jail that day. Agent
12 Pfeiler is somewhat coy about it, because he knows he's
13 going to jail, but Mr. Buttikofer thinks, "Well, maybe I
14 can help myself and not go to jail," but that didn't
15 happen. But the point of the matter is at first he did
16 say he didn't know anything about the video. At first he
17 said "I didn't send it," but eventually he came around
18 and told him he probably did.

19 As far as the variance goes, I spent a lot of time
20 on statistics in this. Exhibit K, 45 images came in on
21 March 30th, a day or two before he was arrested, between
22 12:15 and 12:20 a.m. And as I am sure you know from
23 doing a lot of child pornography cases, because,
24 unfortunately, it's a pandemic across the country, most
25 child pornography defendants organize, place their stuff

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1 in folders, make them by categories, and they have
2 thousands. In fact, the statistic I showed in the memo
3 said that the average number of images per defendant is
4 4,572. He had 45. 1 percent of the average.

5 Now, I also had an expert talk about the child
6 pornography that was found on his phone. And Peyton
7 Engel says "There were no bookmarks on any of that child
8 pornography. I didn't find any search terms for child
9 pornography, such as like PTH-C," preteen hard-core, "and
10 Little Lolita," and he said they were all on the cache,
11 not easily retrievable. And the argument that Mr. Engel
12 made is that, look, unless he was a computer guru, he
13 wouldn't even know they were there, because they were in
14 the cache and he wouldn't have any way to retrieve them.
15 Now, again, I'm not trying to make an excuse. He clearly
16 was on a website which did contain child pornography.
17 But -- and he had a screenshot that he took of one image
18 of child pornography. But I think you have to put this
19 in perspective when you compare it to the rest of the
20 individuals that you see go in front of you. They're not
21 in folders. They're not easily retrievable. They're
22 just there. And, again, that doesn't excuse anything.
23 It doesn't excuse the fact that he sent that video to the
24 undercover agent. I get that.

25 I spent a lot of time talking about the guidelines.

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1 And we agree that the guidelines are adequately -- the
2 presentence writer calculated the guidelines adequately
3 and correctly. But the government spent very little time
4 talking about all the information I put in my brief about
5 why those guidelines are skewed, and in this case, I
6 think they're very skewed.

7 The Illinois case, to me, having a fantasy
8 discussion with someone is not criminal. It's
9 disgusting, but it's not criminal. When I say something
10 like, I get angry with someone, "I'm so mad I could kill
11 you," does that mean I should be charged with attempted
12 murder? It's the same type of scenario. This is a
13 fantasy discussion between I believe a prostitute who is
14 trying to help herself, who is trying to entice him to
15 come to Illinois, which he can't do because he doesn't
16 want to do it. And I don't know why we spent so much
17 time on the Illinois matter because that's not why we are
18 here. And as I told you in my brief, that case is going
19 to be dismissed as soon as he gets sentenced here. I
20 think I already talked about that.

21 The letters for him -- and you pointed this out too
22 in your initial observations -- he had steady employment
23 for 20 years. He lost that job because of the Illinois
24 charge. The letters all say the same thing. He is a
25 good person. He is helpful. He made some very poor

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1 choices and decisions. I want to say that it is an
2 addiction. He should have sought help earlier to help
3 his addiction. And I think he tried once he got charged
4 in Illinois. He went to Daniel Finn, but he wasn't
5 qualified to deal with this, and he should have gone to
6 somebody else. He's amenable to treatment, however, is
7 what I am trying to say.

8 And I don't think this charge defines him as a
9 person. Certainly what he did is awful, but it doesn't
10 really define him as who he is.

11 So the last thing I want to talk about was why you
12 should give the downward departure. In the memo at page
13 20 there were factors to consider. Like I said,
14 1 percent. He has 1 percent of an amount of child
15 pornography on his phone of the average defendant. How
16 did he get it? Well, we know it all came in on
17 March 30th. What was the volume? Significantly less
18 than the average child pornographer. How long did he
19 have it? Well, it appears he had it for like two days,
20 but he also had, I think, some other images that started
21 coming in on February 20th, a month and a half before he
22 was arrested. But what's the big kicker here is, where
23 is all the child porn on -- the 63,000 images that the
24 Cellebrite download had from his phone in Illinois?
25 There aren't any. And I didn't hear another word -- and

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1 I'm assuming there are some. I heard a lot of child
2 erotica, but I didn't hear anything about adult
3 pornography in those 63,000 images either. I'm assuming
4 there was some. What was his attention to his
5 collection? Nothing, no organization, no nothing. He
6 deleted Abby as soon as he got it. They were all in the
7 cache. Did he transmit any of them? It doesn't appear
8 that he did. There was no VPN, as alleged, so he
9 couldn't hide it. And he has no hands-on or production.

10 So, Judge, for those reasons, I think a downward
11 variance is appropriate. I cannot ask you for less than
12 6 years, and I won't do that because that would violate
13 the plea agreement, but I do think a downward variance is
14 very warranted, and I'd ask you to do that.

15 THE COURT: Thank you, Mr. Eisenberg.

16 Mr. Buttikofer, this is the time in the hearing when
17 you have an opportunity to speak to me directly to tell
18 me anything you'd like me to take into account in
19 determining your sentence. You don't have to say
20 anything. And if you choose not to say anything, I won't
21 hold that against you in any way. But if there is
22 anything you would like to say, now is the time to do so.

23 THE DEFENDANT: Yes, Your Honor, I would.

24 MR. EISENBERG: Why don't you use the
25 microphone.

1 THE DEFENDANT: Thank you. Excuse me. I had
2 made some notes this morning. I had a sleep study last
3 night for sleep apnea, so I got done at about 6 -- 5:30
4 this morning, so -- you know, from immediately after when
5 I spoke with Mark last night, so I made some notes here
6 to say today. Sorry.

7 Your Honor, first of all, I want to be totally clear
8 that I a hundred percent admit the guilt of these
9 charges. I don't want to blame this on my autism
10 disorder, my porn addiction, the police, the FBI agent,
11 anybody. It fully comes on me.

12 I read the victim impact statements that the
13 prosecutor provided me and my attorney. They are a great
14 impact on me. I understand how shameful and disgusting
15 my actions were and how they contributed to the cycle of
16 abuse of children. You know, it makes me physically
17 sick, honestly, to know that I played any part in this
18 whatsoever.

19 I know that I hurt -- excuse me. I know that I hurt
20 a lot of people with my selfish actions. My mom; my dad;
21 my stepdad; my stepmom; my daughters, Madie and Katie; my
22 brother, Joel; my ex-girlfriend; my friends; and the rest
23 of my family. They've all been drastically impacted by
24 my behavior. The only way to attempt to redeem myself
25 with this is to live a good and honest life going

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1 forward.

2 Your Honor, I know my journey from here on out is
3 not going to be easy. But I'm fully dedicated to make
4 that happen and live an honest and good life from here on
5 out.

6 While I have been incarcerated, I have met with a
7 number of psychologists, and I read a lot of books about
8 this stuff -- like *Treating Out-of-Control Sexual*
9 *Behavior; Your Brain on Porn*; the book that they referred
10 to earlier, *Caught in the Web of the The Criminal Justice*
11 *System; Sex Addicts Anonymous*, "big book"; *Daily*
12 *Meditations For Men and Women Recovering From Sex and*
13 *Porn Addiction* -- and I've learned a lot about myself in
14 the last 17 months, Your Honor.

15 I've gained some healthy coping strategies to go
16 forward. I look forward to continuing with the Sex
17 Offender Treatment Program in prison, and getting a
18 further understanding of myself and what led to my
19 actions so I never have anything like this happen again.

20 I want to apologize again to everybody here in the
21 courtroom today, everybody that's involved with this. I
22 thank my family and my friends who have stuck by me and
23 supported me, and I hope you understand that these
24 terrible actions will not define me. I will live a
25 better life going forward.

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1 Your Honor, since the day I got incarcerated here in
2 Cedar Rapids, I've experienced a lot. This is the first
3 time I've been in jail for a period of time. My bunkmate
4 about a month and a half ago hung himself, which, you
5 know, really showed me how valuable life and loved ones
6 really are. I understand I have to go to prison for the
7 crime I committed, but I'd like to ask the Court to be
8 able to self-surrender to prison, or at least to give me
9 a few weeks to say good-bye to my family, especially my
10 great grandma who is 103 because there's a good chance
11 that I will never get to see her again. I have never had
12 any write-ups in the jail, Your Honor, in the 17 months
13 I've been here. And I give you my word that I will
14 follow all rules set by the Court if this is granted to
15 me.

16 I truly am not the same person I was going into all
17 this, and I am greatly ashamed. It took this catastrophe
18 here for me to realize that I was living so wrong. And
19 that's it, Your Honor.

20 THE COURT: All right. Thank you,
21 Mr. Buttikofer.

22 All right. We've been going now for two-and-a-half
23 hours. Our court reporter needs a break, and so we're
24 going to be on break for 15 minutes. We will come back
25 at 10:50. At that time, I will pronounce the sentence.

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1 We'll be in recess.

2 (Whereupon, a brief recess was taken.)

3 THE COURT: We are back in the matter of United
4 States of America versus Douglas John Buttikofer, Jr.,
5 case number 20-CR-1012. We have taken evidence in the
6 sentencing hearing, heard arguments from the parties,
7 heard allocution, and I understand there is no victim
8 that wishes to address the Court, so we are at that part
9 of the hearing where I am going to pronounce sentence.

10 I want to make some comments about the evidence
11 before the Court -- before I turn to the 3553(a) factors.
12 First of all, I found both witnesses before me today,
13 Charles Gregory and Joshua Heer, to be credible
14 witnesses. With regard to Gregory in particular, I found
15 his testimony to be credible. I found that he told what
16 he knew, and what he knew is what the defendant told him,
17 that he didn't have any knowledge beyond that. I found
18 his recitation of the facts to be credible, and that is
19 that he was telling the truth about what he heard the
20 defendant tell him.

21 The question always is what -- to what extent the
22 defendant told him is the truth and to what extent what
23 the defendant told him was bluffing or other posturing by
24 him. With regard in particular to his discussion about
25 the Philippines, that troubles me. I found it to be

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1 credible and I find it likely the defendant did make
2 comments about wishing he would have just gone to the
3 Philippines instead of spending his money on criminal
4 defense here. That suggests to me a low degree of
5 acceptance of what he has done here is wrong. I combine
6 that incidentally with the fact that he committed this
7 offense while he was on pretrial release on another
8 sexual offense out of Illinois. And I'll talk more about
9 that Illinois offense in a moment. Whether he is guilty
10 or not guilty of some offense in Illinois, the fact is he
11 was on pretrial release at the time for a sexual
12 assault -- or grooming a child for sexual assault, and
13 while under that condition, he continues to engage in the
14 conduct he engaged in here in the offense conduct. And
15 that's consistent in my view with what Mr. Gregory
16 testified about, the defendant still not giving up and
17 still interested in pursuing sex with children by going
18 to the Philippines.

19 With regard to Mr. Gregory's comments about the
20 defendant's statements of the autism defense, I found
21 them to be credible. I think Mr. -- and Mr. Eisenberg
22 makes a good point -- that a large portion of
23 Ms. Christiansen's conclusion was based upon her
24 conversation with the defendant's mother, which there's
25 no evidence the defendant attempted to influence that.

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1 It's very clear to me though that the intended defense of
2 this trial was going to be to suggest that the defendant
3 was unusually susceptible to influences by an undercover
4 agent because he was on the autism spectrum, and I
5 believe that the defendant told Mr. Gregory that he was
6 going to do anything he could in his power to pursue that
7 defense and to make it clear, as best he could, that he
8 was on the autism spectrum to -- in order to try to get
9 off of these charges.

10 With regard to the testimony by Joshua Heer, I found
11 him to be a credible witness. The Illinois event and
12 actions are a mixed bag in my mind. I understand the
13 argument that there is fantasy and there's reality, and
14 some people engage in sexual fantasy and they find that
15 to be exciting and yet don't ever act and never intended
16 to act. That could be what was going on here. It could
17 also be that the defendant fully intended to act and was
18 intentionally trying to groom children through the use of
19 this CS. I think it's probably someplace in between,
20 quite frankly, and here's my conclusion of the facts.
21 And that is, I think the defendant would have loved to
22 have been in a position to have engaged in sex acts with
23 children, and he lost his nerve when push came to shove.
24 And that suggests that maybe he wouldn't have actually
25 gone through with it. He clearly didn't go through with

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1 it. He spent hours apparently talking but never acting
2 on it when the CS was making the opportunity available to
3 him. And so while I think he has a strong interest in
4 having sex with children, at the end of the day, on this
5 occasion at least, he lost his nerve to go through with
6 it, either because he was fearful that she was connected
7 to law enforcement or simply because he didn't have the
8 nerve to go through with engaging in those acts with
9 children.

10 Again, it bothers me that he was on pretrial release
11 from that charge when he committed the charge before this
12 Court. But I don't find the defendant -- That he did
13 not, in fact, go forward with the acts in Illinois I
14 think are to his credit largely.

15 I want to talk about the other evidence before the
16 Court in the form of the opinions by Ms. Christiansen,
17 Ms. Farley, and Mr. Rosell. I give almost no weight to
18 Ms. Christiansen's opinions regarding the defendant being
19 on the autism spectrum. I found her testimony -- and to
20 be clear for the record, I presided over a hearing,
21 evidentiary hearing, during which she testified in
22 relation to a motion in limine filed by the government.
23 I issued a ruling at document number 93 eliminating
24 substantially the testimony I was going to allow at trial
25 in this matter. She was qualified to render an opinion

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1 on autism spectrum, but in my mind, just barely. She
2 based her opinion almost exclusively upon reports of an
3 interview with the defendant's mother. It was not a
4 robust research of the defendant's history. She didn't
5 look into his school records, didn't go back and talk to
6 other childhood friends. It was almost completely a
7 hearsay-based conclusion based on a discussion with her
8 mother. And when she testified, I found her testimony to
9 be incredibly incredible. She was not a good witness.
10 She performed poorly. It was clear that she had an
11 agenda to push, and I found her testimony to be of very
12 little value, if at all.

13 That plays in then into Ms. Farley's testimony --
14 not testimony, but opinion as reflected in Exhibit P, and
15 Mr. Rosell's opinion in Exhibit R, because they both
16 relied at least to some degree on Ms. Christiansen's
17 opinion and her report. I give little weight to
18 Ms. Farley's report. I don't know her credibility. She
19 did not testify. She was not subject to
20 cross-examination. I do not know her qualifications. I
21 do not know from the report the extent to which she
22 reached her conclusions based on what Ms. Christiansen
23 concluded. And I just found her report to be not very
24 helpful and not persuasive to me.

25 I gave some weight to Mr. Rosell's testimony -- or

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1 Dr. Rosell's testimony, as reflected -- or not
2 "testimony," opinion, as reflected in his report. He did
3 conduct some examination and tests on the defendant, and
4 those I find to be reliable to some degree. The problem
5 with his report is, again, it relies at least in part on
6 Ms. Christiansen's report, and I don't know how much. I
7 don't know his credibility. He was not subject to
8 cross-examination. And there are inconsistencies in what
9 he stated were the facts as he understood them and the
10 facts as I understand them to be as reflected in the
11 presentence investigation report. And I am -- I also
12 caught, as the government did, that he apparently never
13 questioned the defendant about the allegations of the
14 defendant being hands-on with a child of his girlfriend
15 at some point in the past. And without a confrontation
16 with the defendant about that, Dr. Rosell's opinion of
17 the defendant stands little chance -- or little risk of
18 hands-on in the future with a child carries much less
19 weight than it would if he had confronted him and dealt
20 with that issue.

21 So I'm going to turn now to the 3553(a) factors
22 here. And turning first to the offense conduct in this
23 instance, the defendant was, as often is the case, online
24 with other people of like mind, looking for and
25 exchanging child porn. He clearly sent videos to an

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1 undercover officer of child porn, of actual sexual abuse
2 of a minor by a mother from the UK, knowing what was on
3 it. I do not buy, to the extent that that's being pushed
4 at all, that he didn't know what was on it or was
5 surprised by it or anything like that. He fully knew
6 what was on it.

7 His motivation I conclude was to curry favor with
8 the person he believed would be the administrator or with
9 the hope of obtaining some additional child porn himself.
10 The fact that he deleted his Kik messenger, I don't know
11 what to make of that. It could be, as Mr. Eisenberg is
12 arguing, that that means that he was done with it, had --
13 was ashamed of it, had no desire to do anything with
14 that, but I find that to be inconsistent with other
15 evidence before me about the defendant's continued
16 interest in child pornography. I think it just as likely
17 that the defendant deleted his Kik app because he has
18 clearly demonstrated that he was very careful about how
19 he dealt with child pornography. The fact that he went
20 to the woman's -- the CS's location and deleted her
21 messages off of her phone shows how vigilant he was in
22 trying to keep a very low profile and make sure there was
23 very little evidence of it out there. It's my
24 understanding, just common understanding, from the Kik
25 messenger that he could reload that app, go back in, and

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1 reidentify himself as the same person he identified
2 himself as before, and have an ability to continue with
3 this -- the person he believed to be the administrator of
4 this site. So I do find his conduct to be intentional to
5 solicit and obtain -- continue to obtain child
6 pornography.

7 Mr. Eisenberg makes a very good point though with a
8 differentiation between this defendant and the defendants
9 I often see. He did not keep thousands of images of
10 child pornography like I normally see. He did not
11 organize them. He did not collect them. Either he is
12 the most careful child pornographer that I've seen where
13 he would view and then delete so he could never get
14 caught with them, or he has less of an interest in it
15 than many of the people that I see that just can't ever
16 delete anything that they ever see that's child
17 pornography and they have to collect it and revisit it on
18 a regular basis. The reality is the defendant had few
19 images. As I noted before when I was going through the
20 guidelines, he had 344 total images. That's just 44
21 images above the 300 images necessary for him to receive
22 a 4-level enhancement under the guidelines.

23 So while the defendant's offense conduct is clearly
24 troubling and disturbing, it does -- it is different from
25 many of the child porn cases I have before me. This

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1 feeds a little bit into the guidelines. It's been urged
2 I should vary downward because the guidelines overstate
3 the seriousness of child pornographers generally, but in
4 particular with this offender. I have on one or two
5 occasions varied downward from the guidelines. On
6 guideline section 2G2.2(b)(6), that is the use of a
7 computer. I've done that when the only offense is
8 somebody obtaining child pornography off of a computer
9 because, in my view, that's the only way anybody gets
10 child pornography these days, and for there to be a
11 2-level enhancement for use of a computer to obtain child
12 pornography, to me, overstates the seriousness of the
13 offense if that's the only thing a person ever did.

14 Here, I don't find that a variance is justified
15 under that ground because the defendant not only used the
16 computer to obtain the child pornography, but then he
17 used the computer to further distribute the child
18 pornography. The guidelines might overstate the people's
19 belief of how serious these offenses are, but if that's
20 the case, then the people through act of Congress has the
21 ability to change the guidelines, and they have on
22 occasion, and we've seen that in recent years with regard
23 to drug offenses and drug guidelines. There is a
24 democratic process through which the people can have
25 their will felt and have the guidelines changed. I don't

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1 believe I, as an unelected official appointed for life,
2 should be second-guessing Congress's decision about the
3 seriousness of this offense and the weight that they
4 believe different factors should have in arriving at the
5 guidelines sentence.

6 It is an advisory guideline sentence, however, and
7 it is only advisory to me. It suggests to me what the
8 commission believes the defendant's sentence should be.
9 But I'm not bound by it, but I'm also not going to vary
10 from the guidelines just based on a disagreement with the
11 guidelines. Even though I know I can have a policy
12 disagreement with the guidelines, I do not.

13 Another ground for a downward variance here is the
14 defendant's steady employment history, and that is a
15 mitigating factor here. The defendant has been steadily
16 employed as a hard worker. The letters of support show
17 that. He has been a hard worker over the years and a
18 reliable person. So that is -- has some mitigation in my
19 mind.

20 It's also been urged as a downward variance that the
21 defendant has little criminal history that is of -- of no
22 import here, in the sense there's no crimes of violence,
23 there's no other acts of a sexual nature, criminal acts
24 of a sexual nature here, and I do find that to be
25 mitigating as well. It's not uncommon, quite frankly, to

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1 find somebody who is convicted of child pornography to
2 have little or no criminal history, but it also doesn't
3 mean it's not mitigating all the same.

4 It's been urged that I vary downward because the
5 defendant is suffering from an addiction to child
6 pornography, a sickness, if you will. I don't find that
7 to be a basis for a downward variance. Whether it's an
8 addiction or not, the fact that he desires child
9 pornography makes him a danger to the community. It
10 makes him likely to reoffend and harm other people. It's
11 akin in my mind to motions for a downward variance
12 because people have drug addictions. And the guidelines,
13 when we're dealing with departures -- not variances but
14 when we're dealing with departures -- note that courts
15 should not depart downward because of an addiction
16 because it is highly statistically connected with future
17 offenses if someone is addicted to drugs. I think the
18 same could be said here. Somebody highly addicted to
19 child pornography is likely to reoffend because they have
20 this desire to have child pornography. So I don't find
21 it to be a mitigating factor.

22 Finally, it's been urged that I vary downward in
23 this case because of the defendant's acceptance of
24 responsibility, and I find that to be a mixed bag here.
25 The defendant clearly has pled guilty to one of the three

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1 offenses he was charged with. He did not plead guilty in
2 a manner that would allow him to earn a third level off
3 for acceptance of responsibility. He committed this
4 offense while he was on pretrial release from another
5 offense related to sexual abuse of children.

6 And, as I mentioned earlier, I credit
7 Mr. Chapman's -- Gregory, I'm sorry, Mr. Gregory's
8 testimony. The defendant was still talking while in jail
9 pending trial in this matter about the desire to go to
10 the Philippines in order to be able to have sex with
11 children. It just suggests he's not come to terms with
12 the wrongfulness of his conduct. I heard his comments
13 during his allocution, and perhaps he has reached that
14 point in his life where he recognizes how severe and how
15 wrong his conduct is, but his actions up until at least
16 this point certainly has not suggested that he fully
17 recognizes the seriousness of his conduct and the need to
18 refrain from doing it.

19 In arriving at a sentence, I've taken into account a
20 number of factors, including deterrence. I need to
21 impose a sufficiently severe sentence to deter the
22 defendant from committing offenses like this in the
23 future. I find any sentence within this guideline range
24 would be sufficient to accomplish that. I have to impose
25 a sentence sufficiently severe to deter others in the

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1 defendant's position from doing similar things. And,
2 again, I find a guideline sentence will accomplish that
3 goal. I need to impose a sentence sufficiently severe to
4 protect the public and also to reflect the seriousness of
5 the offense conduct here. The offense conduct is
6 serious, and I do find that the defendant still poses
7 some risk. Whether it's hands-on -- Dr. Rosell says
8 no -- but whether it's a hands-on risk or whether it's a
9 risk of him accessing child pornography and continuing to
10 victimize those children, I think there is a danger of
11 that remaining because of the defendant's persistent
12 pursuit of child pornography as reflected in his conduct
13 here.

14 So taking into account all the factors at Title 18
15 United States Code Section 3553(a), it is the judgment of
16 this Court, Mr. Buttikofer, that you are hereby committed
17 to the custody of the Bureau of Prisons to be imprisoned
18 for a term of 108 months. That is roughly in the middle
19 of the advisory guideline range. I find the middle to be
20 appropriate and not the top, because there are some
21 mitigating factors that Mr. Eisenberg has pointed out
22 here. I find a downward variance below the advisory
23 guideline range is not appropriate here. Having taken
24 into account not only the individual arguments but the
25 totality of the arguments made by the defense for a

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1 downward variance, I find a guideline sentence is
2 necessary to achieve the goals of sentencing here.
3 Although I have imposed a sentence in the middle of the
4 guideline range, it's the middle of the guideline range
5 and not the bottom of the guideline range because, again,
6 I am concerned about the defendant's full acceptance of
7 responsibility here, and I find highly aggravating the
8 fact that he committed this offense while he was on
9 pretrial release for another offense connected to sexual
10 abuse of children.

11 It is ordered that this term of imprisonment be
12 served consecutive to any term of imprisonment that may
13 be imposed for the case set forth in paragraph 47 of the
14 presentence report. This is under Title 18 United States
15 Code Section 3584. It is recommended that you be
16 designated to a Bureau of Prisons facility in close
17 proximity to your family commensurate with your security
18 and custody classification needs. It is recommended that
19 you participate in the Bureau of Prisons 500-hour
20 Comprehensive Residential Drug Abuse Treatment Program or
21 an alternate substance abuse treatment program. It is
22 recommended that you participate in the Bureau of Prisons
23 Sex Offender Management Program.

24 Upon release from imprisonment, you will be placed
25 on supervised release for a term of 5 years. While on

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1 supervised release, you must comply with the following
2 mandatory conditions: You must not commit another
3 federal, state, or local crime; you must not unlawfully
4 use or possess a controlled substance; and you must
5 cooperate in the collection of a DNA sample as directed
6 by your probation officer.

7 You must comply with the requirements of the Sex
8 Offender Registration and Notification Act as well, as
9 directed by the United States probation office, the
10 Bureau of Prisons, and any state sex offender
11 registration agency in the location where you reside,
12 work, and/or are a student, and/or were convicted of a
13 qualifying offense.

14 In addition, you must comply with the standard
15 conditions of supervision set out in my judgment order
16 together with all the special conditions set out at
17 paragraphs 82 through 91 of the presentence report.

18 It is ordered that you must pay to the United States
19 a special assessment of \$100, which is due immediately.
20 I find that you are indigent and do not impose the \$5,000
21 special assessment under the JVTA found at Title 18
22 United States Code Section 3014. Likewise, I find, given
23 your financial condition and the fact that there is
24 pending restitution, that you not pay a -- that you not
25 pay a special assessment under the AVAA found at 18 U.S.

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1 Code -- I'm sorry, 2259(a). I likewise find you do not
2 have the ability to pay a fine, and no fine will be
3 imposed.

4 I am going to order restitution in this case, but as
5 I noted earlier, that restitution order -- a
6 determination of the amount of restitution will be
7 determined at a later hearing on November 16, 2021, at
8 the request of the parties. I will announce the
9 restitution obligation at that time, together with the
10 other language that would go with any kind of financial
11 penalty.

12 You are hereby remanded to the custody of the United
13 States Marshal.

14 Ms. Dupuich, there remains outstanding Counts 1 and
15 2.

16 MS. DUPUICH: We're asking to dismiss those.
17 Thank you, Your Honor.

18 THE COURT: The Court grants that motion, and
19 Counts 1 and 2 are dismissed.

20 Ms. Dupuich, before I advise Mr. Buttikofer of his
21 limited rights to appeal, is there anything else on
22 behalf of the United States?

23 MS. DUPUICH: No, Your Honor.

24 THE COURT: Officer Korth?

25 PROBATION OFFICER: No, Your Honor.

1 THE COURT: Mr. Eisenberg?

2 MR. EISENBERG: I just had two things, Judge.

3 THE COURT: Certainly.

4 MR. EISENBERG: I know that you can't designate
5 where he goes, but can you make a recommendation that he
6 goes to Englewood, Colorado? That is in our district,
7 and they do have the RDAP program and they do have a sex
8 offender program. And I know it's just a recommendation
9 but that might help.

10 THE COURT: I'm not going to make that
11 recommendation, Mr. Eisenberg. I appreciate you asking
12 for it, but my position generally is I don't make
13 recommendations to the Bureau of Prisons except under
14 very special circumstances, and here's why. I've been to
15 a number of conferences where I talk with the Bureau of
16 Prisons officials, and what they tell me is, they -- when
17 they get a recommendation from a judge, they really try
18 to comply with that, but it often would be inconsistent
19 with what they believe would be in the best interest of
20 the offender, taking into account all the very many
21 things they have to take into account to try to figure
22 out what would be best housing for an offender, and that
23 they've had occasions where by complying with the judge's
24 request, it has not worked out best for the inmate. And
25 so there's that factor, and then we add on top of it the

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1 COVID pandemic, and right now, the Bureau of Prisons has
2 had tremendous success in limiting the outbreak of COVID
3 within the prison system, but part of that is they are in
4 total control of the movement of prisoners, and I don't
5 want to do anything that's going to interfere with that
6 or endanger Mr. Buttikofer or any other inmate by having
7 where and how they place him be influenced by something I
8 requested. So given that, I'm not going to make a
9 request for a specific facility.

10 I also meant to mention the defendant's request for
11 self-surrender or a furlough, and I'm not going to grant
12 that. The defendant is -- this is a mandatory detention
13 given the nature of the offense here, and I'm not going
14 to allow the defendant the privilege of self-surrender or
15 to grant a furlough to him at this time.

16 Anything else though, Mr. Eisenberg?

17 MR. EISENBERG: I think when you are done with
18 your discussion about the appellate rights, Ms. Dupuich
19 and I had a scheduling issue we'd like to talk to you
20 about.

21 THE COURT: Very good.

22 All right. So, Mr. Buttikofer, let me talk to you,
23 sir, about your right to appeal. If you disagree with
24 the sentence I've just imposed, you have in this case a
25 limited right to appeal because you've signed a plea

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1 agreement with the government in which you have given up
2 your right to appeal except under limited circumstances
3 set forth in that paragraph of that plea agreement. So
4 what I'm about to tell you about your right to appeal
5 applies only if you believe under the terms of the plea
6 agreement you can appeal. If you are going to appeal,
7 it's going to be to a higher court called the Eighth
8 Circuit Court of Appeals. To appeal to that court, you
9 would have to file a written notice of appeal with the
10 Clerk of Court for the Northern District of Iowa here in
11 Cedar Rapids within the next 14 days. If you fail to
12 file a written notice of appeal in the next 14 days, you
13 give up forever your right to appeal the sentence I've
14 just imposed. If you would like to appeal but you cannot
15 afford the services of an attorney to do so, I would
16 appoint an attorney to represent you on appeal at no
17 expense to you.

18 Do you understand your right to appeal, sir?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you have any questions about
21 anything we've done here today, sir?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. Mr. Eisenberg, you
24 wanted to talk about scheduling.

25 MR. EISENBERG: Sure. On the November 16th

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1 restitution hearing, could we do it by Zoom or by phone?

2 THE COURT: Certainly. I'm amenable to that.
3 Ms. Dupuich?

4 MS. DUPUICH: Yes, Your Honor.

5 THE COURT: Yeah, that would be perfectly fine.
6 The defendant has a right to be present at that hearing
7 as well. Do you want to have him present, Mr. Eisenberg?

8 MR. EISENBERG: I suppose it depends where he
9 is. If he's in the Linn County Jail still, sure. If
10 he's not, I think -- I don't know if the accommodations
11 could be made to have him appear by phone. I think that
12 would be satisfactory with him.

13 THE COURT: All right. We can certainly do it
14 by phone wherever he is at. Sometimes -- working with
15 the Bureau of Prisons to get that accomplished sometimes
16 is a little difficult, but we'd get it accomplished one
17 way or the other, so we can certainly do that. If he is
18 still in the Linn County Jail at the time, then we can
19 have him brought over.

20 Ms. Dupuich, I'm going to put you in charge of
21 monitoring where he's at at that time and advising the
22 Court, working with Mr. Eisenberg, of how he's going to
23 appear and whether we need to get a writ with the
24 marshals or an ASR or whatever we call them to have him
25 brought over if he's in the Linn County Jail.

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1 Ms. Dupuich, anything further from you?

2 MS. DUPUICH: No, thank you.

3 THE COURT: All right. That concludes this
4 hearing.

5 (Proceedings concluded at 11:15 a.m.)

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C E R T I F I C A T E

I, Patrice A. Murray, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that at the time and place heretofore indicated, a hearing was held before the Honorable C.J. Williams; that I reported in shorthand and transcribed to the best of my ability the proceedings of said hearing; and that the foregoing transcript is a true record of all proceedings had on the taking of said hearing at the above time and place.

I further certify that I am not related to or employed by any of the parties to this action, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand this 27th day of October, 2021.

/s/ Patrice A. Murray

Patrice A. Murray, CSR, RMR, FCRR
Court Reporter
PO Box 10541
Cedar Rapids, Iowa 52410

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